

1 Kenneth M. Seeger (State Bar No. 135862)
2 Brian J. Devine (State Bar No. 215198)
3 **SEGER DEVINE LLP**
4 4040 Civic Center Dr., Suite 200
5 San Rafael, CA 94903
6 Telephone: (415) 981-9260
7 Facsimile: (415) 981-9266
8 bdevine@seegerdevine.com

9 Class Counsel

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JONATHAN SPIRO and SIMONE
KAPLAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

TRINITY MANAGEMENT SERVICES,
1188 MISSION STREET LP, 1890
CLAY STREET LP, 2240 GOLDEN
GATE AVE LLC, CRYSTAL TOWER
PARTNERS LLC, SANGIACOMO
FAMILY LP, TRINITY G2 HOLDING
LLC, JAMES SANGIACOMO, SUSAN
SANGIACOMO, and DOES 1-50,
inclusive,

Defendants.

Case No. CGC-17-562293

**DECLARATION OF BRIAN DEVINE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT**

Date: July 20, 2023
Time: 10:00 a.m.
Place: Department 613

The Honorable Andrew Y.S. Cheng

I, Brian Devine, declare as follows:

1. I am an attorney at law and partner in the law firm Seeger Devine LLP, attorneys in this action for Plaintiffs Jonathan Spiro and Simone Kaplan individually and on behalf of all others similarly situated. I have personal knowledge of the matters stated in this declaration and I could and would competently testify to them if called as a witness.

1 2. Attached as Exhibit A is the Amended and Restated Class Action
2 Settlement Agreement dated April 10, 2023.

3
4 3. If this Settlement is approved, Settlement Class Members will receive
5 substantial cash benefits. An average of \$500 per apartment will be sent to Class Members, and
6 Class Members who resided in a Trinity apartment for a year or more will receive an average of
7 at least \$1,000 per apartment. The largest award to a single Class Member will exceed \$3,300.

8
9 4. Additionally, following the settlement, Trinity discontinued charging water
10 and trash bills to its tenants, even those tenants who moved in after the Class Period and are not
11 Class Members. For example, Trinity notified its tenants on December 19, 2022 that “Effective
12 immediately, you will no longer be charged for water, trash, sewer, and trash services pursuant to
13 the Ratio Utility Billing Service (RUBS) Addendum to your current lease.” Based on the data
14 that Trinity provided to us in discovery, I estimate that Trinity was charging its tenants between
15 \$85,000 and \$100,000 per month in charges for water and trash bills at the time they discontinued
16 these charges.

17
18 5. On April 16, 2023, I provided CPT with a spreadsheet containing the data
19 obtained in discovery, including each Class Member’s name, e-mail address (if known) last
20 known mailing address, and the amounts that Trinity had charged each Class Member for water
21 and trash services.

22
23 6. I am not aware of any Class Member who has submitted any objection to
24 the Settlement. I am aware of only one Class Member (Ashley Sue Wen Teow) who has
25 submitted a request to be excluded from the Class and the Settlement.

26
27 7. Although Plaintiffs prevailed on the issue presented at the first phase of the
28 bifurcated trial, I believe that Trinity would have presented additional defenses at the second

1 phase of the bifurcated trial. There was a significant risk that some of Trinity's arguments could
2 have significantly affected the damages that would be awarded to Class Members. Additionally,
3 Trinity vowed that it would appeal this Court's finding that Trinity had violated the Rent
4 Ordinance. An appeal of this decision would present a novel legal question for the Court of
5 Appeal to resolve. Although I believe that this Court correctly decided the issue and that this
6 Court's decision would be affirmed on appeal, it is possible that Trinity could have prevailed in
7 its appeal, and that risk must be considered in evaluating the settlement in this case. Even if
8 Plaintiffs prevailed on the appeal, the appellate process would be lengthy and Class Members
9 likely would not have received compensation for years. Given the current economic climate,
10 another risk that I considered is whether Trinity would still have any assets at the end of the
11 appellate process, or if Plaintiffs would simply be a creditor in a bankruptcy proceeding.

12
13 8. The proposed Settlement is the result of hard-fought and difficult
14 negotiations that spanned over five years and included two in-person settlement conferences and
15 numerous virtual conferences and phone conferences, all of which were presided over by Judge
16 Mary A. Wiss.

17
18 9. I recognize the expense and delay of continued litigation against Trinity
19 through trial and a possible appeal. Over the last five and a half years, my firm and I have
20 conducted an extensive investigation into this case, including first phase of a bifurcated trial and
21 preparing for the second phase of trial. In evaluating the Settlement, we have considered the
22 uncertainty and risk of the outcome of the litigation and the difficulties and delays inherent in
23 such litigation. Based upon our investigation, our understanding of the law, and an analysis of the
24 benefits which the proposed settlement affords to the Class, we have concluded that the
25 Settlement is in the best interest of the Class.

26
27 10. Before selecting a Claims Administrator in this case, I obtained
28 competitive quotes from three potential administrators. CPT Group, Inc. submitted the lowest

1 quote of all of the administrators, and this Court approved them as the administrator in this case.
2 CPT is highly experienced in administering settlements like this, and has frequently been
3 approved by this Court to administer class settlements. I have monitored CPT's administration of
4 this settlement, and believe they have done a fantastic job and they have accomplished all of the
5 tasks the Court and I have asked of them. CPT's fee for administering the settlement in this case
6 is \$49,500. I believe CPT's fee is fair and reasonable and request that this Court approve
7 payment of CPT's bill from the Settlement Fund.
8

9 11. On January 30, 2023, Trinity paid \$50,000 of the Settlement Fund into the
10 Seeger Devine LLP IOLTA Client Trust Account ("IOLTA Account."). On March 21, 2023, this
11 Court ordered that \$3,100,000 be transferred from an attached account at First Republic Bank to
12 the IOLTA Account and that transfer occurred on March 23, 2023. (Stipulation and Order
13 Dissolving Writ of Attachment dated 3/21/2023.) Consequently, Seeger Devine LLP now holds
14 the entire \$3,150,000 Settlement Fund in its IOLTA Account. This Court ordered that Seeger
15 Devine is not to transfer these funds from its IOLTA account except as expressly ordered by this
16 Court. (Order Dissolving Writ at ¶4.) We have not and will not transfer any of these funds until
17 this Court approves the transfer.
18

19 I declare under penalty of perjury under the laws of California that the foregoing is
20 true and correct.

21 Executed on June 27, 2023.

22 By 
23 Brian J. Devine
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DECLARATION OF BRIAN J. DEVINE

EXHIBIT A

AMENDED AND RESTATED CLASS ACTION SETTLEMENT AGREEMENT

This AMENDED AND RESTATED CLASS ACTION SETTLEMENT AGREEMENT, dated as of April 10, 2023 (this “Settlement Agreement” or “Settlement”) is entered into by and between Trinity Management Services (“Trinity”) and the undersigned Class Counsel on behalf of the Class Representatives. The Class Representatives, together with Trinity, are sometimes referred to herein as the “Parties.”

DEFINITIONS

For purposes of this Settlement Agreement the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural and vice versa.

(a.)	“ <u>Action</u> ” shall mean the matter of <i>Jonathan Spiro, et al. v. Trinity Management Services, et al.</i> , San Francisco Superior Court case no. GCG 17-562293.
(b.)	“ <u>Administration Funds</u> ” shall have the meaning set forth in Section 2.2(a).
(c.)	“ <u>Allocated Utility Charges</u> ” shall mean charges for water, sewer, trash and/or recycling services, including administration fees, that Trinity or Trinity’s agents allocated to Class Members pursuant to a Utility Invoicing and Allocation Addendum that was attached to and incorporated into the Class Member’s Lease.
(d.)	“ <u>Apportioned Utility Charges</u> ” shall have the meaning set forth in section 4.1(a).
(e.)	“ <u>Attached Account</u> ” shall mean a deposit account held solely in the name of Trinity Management Services at First Republic Bank with account number 80015441465.
(f.)	“ <u>Business Day</u> ” shall mean any day other than Saturday, Sunday or any holiday recognized by the Trial Court.
(g.)	“ <u>Claims Administrator</u> ” shall mean a third-party retained by Class Counsel and approved by the Trial Court to administer this Settlement.
(h.)	“ <u>Class Counsel</u> ” shall mean Brian J. Devine and Kenneth M. Seeger of SEEGER DEVINE LLP, or such other attorneys as shall be approved by the Court as counsel to the Settlement Class.
(i.)	“ <u>Class Members</u> ” shall mean members of the Settlement Class.

(j.)	“ <u>Class Representatives</u> ” shall mean Jonathan Spiro and Simone Kaplan, or different person(s) as shall be designated by the Trial Court as the Representative(s) of the Settlement Class, in the Action.
(k.)	“ <u>Court</u> ” and/or “ <u>Trial Court</u> ” means the Superior Court of California in and for the County of San Francisco.
(l.)	“ <u>Final Judicial Approval</u> ” means that both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
(m.)	“ <u>Net Benefit Funds</u> ” shall have the meaning set forth in Section 2.34.
(n.)	“ <u>Notice</u> ” shall have the meaning set forth in Section 7.2(a).
(o.)	“ <u>Opt-Out Deadline</u> ” shall mean the date and time set by the Trial Court, which is the last day on which Class Members may exercise the Opt-Out Right.
(p.)	“ <u>Opt-Out Right</u> ” shall have the meaning set forth in Section 3.3.
(q.)	“ <u>Parties</u> ” shall have the meaning set forth in the preamble.
(r.)	“ <u>Preliminary Approval</u> ” shall mean the conditional certification of the proposed class for settlement purposes and the preliminary approval of this Settlement Agreement by the Trial Court.
(s.)	“ <u>Released Parties</u> ” shall mean all owners of residential property in San Francisco that were managed, operated, or maintained by Defendant Trinity Management Services, and each of its direct or indirect parent companies, subsidiaries, affiliates, divisions, joint venturers, predecessors, successors, members, and assigns, together with each of their directors, officers, employees, agents, attorneys, shareholders, trustees, underwriters and insurers, and for each person identified above, all of his, her, or their respective past, present or future heirs, estates and personal representatives.
(t.)	“ <u>Settled Claims</u> ” shall mean any and all claims, including assigned claims, regardless of the legal theory, existing now by any or all members of the Settlement Class arising out of or relating to any allegation that Trinity or any of the Released Parties improperly or illegally charged any Allocated Utility Charges at any time through and including January 25, 2023 or failed to remit

	to or credit the Settlement Class with any refunds received by Trinity attributable to any of such Allocated Utility Charges, including any rent increases that allegedly were improper or illegal solely because of Trinity or any Released Party charging any Allocated Utility Charge.
(u.)	“ <i>Settlement Agreement</i> ” shall mean this agreement together with any amendments to this agreement to which the Parties agree pursuant to section 8.8.
(v.)	<p>“<i>Settlement Class</i>” shall mean all individuals who, at any time between November 3, 2014 and March 12, 2020:</p> <ul style="list-style-type: none"> • Rented or leased any residential property located in San Francisco that, at any time during his or her tenancy, was: (1) owned, managed, operated, or maintained by Defendant Trinity Management Services, and (2) subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance, codified at Chapter 37 of the San Francisco Administrative Code, and • Paid Defendant Trinity Management Services and/or its agents for trash, recycling, water, or sewer services; and • Where such payments were based on calculations based on the Utility Invoicing and Allocation Addendum attached to and incorporated into the Tenant's Lease at said property. <p>The Settlement Class shall expressly exclude the Judicial Officer(s) and any immediate family member of the Judicial Officer(s).</p>
(w.)	“ <i>Settlement Class Members</i> ” shall mean all Class Members except those who have exercised a valid and timely Opt-Out Right pursuant to Section 3.3.
(x.)	“ <i>Settlement Payment</i> ” shall have the meaning set forth in section 4.1(b).
(y.)	“ <i>Trinity</i> ” shall mean Trinity Management Services and each of its direct or indirect parent companies, subsidiaries, affiliates, divisions, joint venturers, predecessors, successors, members, and assigns, together with each of their directors, officers, employees, agents, attorneys, shareholders, trustees, underwriters and insurers, and for each person identified above, all of his, her, or their respective past, present or future heirs, estates and personal representatives.
(z.)	“ <i>Writ of Attachment</i> ” shall mean the Writ of Attachment issued by the Court in the Action on November 29, 2022.

ARTICLE 1 – RECITALS

WHEREAS, Trinity and the Class Representatives hereby agree to a class action settlement subject to the approval of the Trial Court, with respect to Class Members which would resolve, on the terms set forth in this Settlement Agreement, all Settled Claims against Trinity and other Released Parties.

WHEREAS, this Settlement Agreement shall not be construed as evidence of or as an admission by any of the Released Parties of any liability or wrongdoing whatsoever or as an admission by the Class Representatives or Class Members of any lack of merit in their claims.

WHEREAS, the Parties entered into a Class Action Settlement Agreement dated January 25, 2023.

WHEREAS, the Parties desire to amend and restate the Settlement Agreement as set forth herein to modify the claims administration procedure and to reflect the fact that Trinity has now funded both the Settlement Fund and the Administration Fund.

NOW, THEREFORE, Trinity and the Class Representatives hereby agree, subject to Final Judicial Approval, compliance with applicable legal requirements, and other conditions, all as set forth below, that the Settled Claims against Trinity and other Released Parties, as defined herein, will be settled, compromised and released, in accordance with the following terms.

ARTICLE 2 – FUNDING

Section 2.1 The Attached Account

(a) At the Parties' request, the Trial Court has dissolved the Writ of Attachment so that the Settlement Fund could be transferred from the Attached Account to the Seeger Devine Client Trust Account.

(b) In the event that this Settlement Agreement is terminated pursuant to Article 7, the Parties agree to jointly request that the Court issue a Writ of Attachment and that a new Attached Account will be created and funded as described in the Parties' Agreement to Dissolve Writ of Attachment and Transfer Settlement Funds, dated March 21, 2023 and the Court's Order Dissolving Writ of Attachment dated March 21, 2023.

Section 2.2 The Settlement Fund

(a) Trinity has already transferred \$3,100,000 (the "Settlement Fund") to the Seeger Devine LLP Client Trust Account. Seeger Devine LLP will hold the Settlement Fund in trust for the benefit of Trinity and not transfer any portion of the Settlement Fund from the Seeger Devine LLP Client Trust Account except as ordered by the Trial Court.

Section 2.3 Administration Fund

(a) Trinity has already delivered to Class Counsel a wire transfer to the Seeger Devine LLP Client Trust Account in the amount of \$50,000 (“*Administration Fund*”). Class Counsel shall retain the Administration Fund in its client trust account until the Trial Court issues an order allowing the funds to be distributed or until this Settlement Agreement terminates pursuant to Article 7, whichever occurs first.

(b) In the event that the amount of the Administration Fund is greater than the amount that the Court orders to be distributed to administer this Settlement, the balance of the Administration Fund shall be added to the Settlement Fund.

(c) In the event that the amount of the Administration Fund is less than the amount that the Court orders to be distributed to administer this Settlement, the difference shall be paid from the Settlement Fund.

(d) In the event this Settlement is terminated pursuant to Article 7, the Administration Fund shall revert to Trinity, minus one half (1/2) of the amount the Court approves to be distributed for administration costs incurred prior to termination.

Section 2.4 Net Benefit Fund

The amount available to pay Class Member claims for benefits under this Settlement Agreement (the “*Net Benefit Fund*”) consists of the Settlement Fund (including any amounts transferred from the Administration Fund under Section 2.3(b)), minus the following: (1) the amount awarded by the Trial Court for Class Counsel attorneys’ fees and costs, (2) the amount awarded by the Trial Court for incentive awards for Class Representatives, and (3) any costs of administration approved by the Court that exceeds the Administration Fund as set forth in Section 2.3(c).

ARTICLE 3 – CLASS MEMBER RIGHTS AND BENEFITS

Section 3.1 Benefit Payments To Settlement Class Members

The portion, if any, of the Net Benefit Fund to which a Settlement Class Member is entitled shall be determined pursuant to the terms of this Settlement Agreement. Payments made pursuant to Section 4.2 shall be made as soon as practical after Final Judicial Approval.

Section 3.2 Suspension of Allocated Utility Charges To Class Members

Trinity agrees that as of January 25, 2023, it will no longer charge Allocated Utility Charges to any Class Member who still resides in their apartment.

Section 3.3 Opt-Out Rights

(a) All Class Members are eligible to opt out of the Settlement represented by this Settlement Agreement (the “*Opt-Out Right*”). Each Class Member wishing to exercise an Opt-Out Right must submit a written letter, signed by the Class Member, that includes the following information: (i) his or her name, address and telephone number; (ii) the address of the Trinity building and the apartment in which he or she resided; and (iii) the date on which he or she vacated the Trinity building. A copy of the letter must be sent to an address that is set forth in the Notice and postmarked no later than the Opt-Out Deadline, as set by the Trial Court.

(b) Within ten (10) Business Days after the Opt-Out Deadline, Class Counsel shall file with the Court and serve on Trinity a list of the names of any Class Member(s) who exercised an Opt-Out Right.

ARTICLE 4 – CLAIMS ADMINISTRATION

Section 4.1 Calculation of Settlement Payment

(a) For each Settlement Class Member, the Claims Administrator shall determine the Settlement Class Member’s Apportioned Utility Charges by dividing the total Allocated Utility Charges for each tenancy equally by the number of Settlement Class Members listed in Trinity’s records as having resided in the same apartment during the same tenancy.

(Example: if the total Allocated Utility Charges for apartment A is \$1,600 and Trinity’s records show that two Settlement Class Members were tenants in apartment A, the Apportioned Utility Charges for each of those two Settlement Class Members is \$800. If only one tenant lived in apartment A, their Apportioned Utility Charges are \$1,600.)

(b) Each Settlement Class Member’s Settlement Payment shall be calculated by dividing the Net Benefit Fund on a *pro rata* basis using each Settlement Class Member’s Apportioned Utility Charges as a percentage of the total amount of Apportioned Utility Charges for all Settlement Class Members.

(Example: In the event that: (a) the Net Benefit Fund is \$1,680,000; (b) Jane Smith’s Apportioned Utility Charges are \$1,600 and (c) the total Apportioned Utility Charges for all Settlement Class Members is \$4,100,000, then Jane Smith’s Settlement Payment is \$655.61.)

Section 4.2 Initial Distribution of Settlement Payment

(a) The Claims Administrator shall distribute the Settlement Payment to Settlement Class Members following Final Judicial Approval as outlined below.

(b) Along with the Notice of settlement, the Claims Administrator shall notify Class Members that, by using the settlement website or by calling the Claims Administrator, they may elect between receiving the Settlement Payment either: (1) by check, or (2) electronically using any widely-used and secure electronic payment method(s) that are recommended by the Claims Administrator. The Claims Administrator also shall notify Class Members that, if they wish to receive their Settlement Payment by check, they should use the settlement website or call the Claims Administrator to ensure that the Claims Administrator has a correct mailing address to send their Settlement Payment by check.

(c) Within fifteen (15) days after Final Judicial Approval, or as otherwise ordered by the Trial Court, the Claims Administrator distribute Settlement Payments to all Settlement Class Members. The Claims Administrator shall make an electronic transfer to all Settlement Class Members who elected to receive their Settlement Payments electronically. For all other Settlement Class Members, the Claims Administrator shall mail a check for the Settlement Payment to the address provided to the Claims Administrator by the Settlement Class Member, or if no address was provided, to the last known address for the Settlement Class Member. Before mailing checks to a last known address, the Claims Administrator shall check the National Change Of Address (“NCOA”) database to determine if an updated mailing address is available.

(d) If a Settlement Class Members elects to receive the Settlement Payment electronically but the electronic payment fails to transfer correctly, the Claims Administrator shall, after a reasonable attempt to resolve any such payment issues, mail a check to the last known address for the Settlement Class Member (after checking the NCOA database for a new address.)

Section 4.3 Second Distribution of Settlement Payment

(a) All Settlement Payment checks issued by the Claims Administrator shall be negotiable for at least one hundred eighty (180) calendar days. For any Settlement Payment checks that remain uncashed for more than one hundred eighty (180) calendar days after issuance, the Claims Administrator will issue a stop payment orders for such checks. Any funds remaining in the Net Benefit Fund after the stop payment orders are confirmed (and any fees are paid for the stop payment orders) will be distributed as follows:

(1) Any Settlement Payment(s) that was not successfully paid to one or more Settlement Class Member(s) who shared an apartment with one or more Settlement Class Member(s) who successfully received their Settlement Payment(s), the entirety of the unpaid Settlement Payment(s) for that apartment will be distributed equally to the Settlement Class Member(s) in that apartment who successfully received their Settlement Payment(s).

(2) The remainder of the funds remaining in the Net Benefit Fund shall be distributed on a pro rata basis to all Settlement Class Members who successfully received

their Settlement Payments, unless the redistribution payment amount would be less than five dollars and zero cents (\$5.00), in which case such redistribution shall be deemed impractical and those funds shall be distributed to those Settlement Class Members receiving more than \$5.00.

(b) If any of the redistribution electronic payments fail, the Claims Administrator shall, after a reasonable attempt to resolve any such payment issues, mail a check to the last known address for the Settlement Class Member (after checking the NCOA database for a new address.)

(c) All redistribution checks issued by the Claims Administrator shall be negotiable for at least one hundred eighty (180) calendar days. If any redistribution checks remain uncashed after one hundred eighty (180) days after being issued, the Claims Administrator shall issue stop payment orders on them. The Claims Administrator shall then distribute any funds remaining in the Net Benefit Fund after the stop payment orders are confirmed (and any fees are paid for the stop payment orders) on a *cy pres* basis to the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, or any other *cy pres* recipient approved by the Court. In no event shall any such remaining funds be returned to Defendant.

ARTICLE 5 – ATTORNEYS' FEES AND ADMINISTRATION

Section 5.1 Class Counsel's Attorney's Fees and Costs of Litigation

Class Counsel intends to make an application to the Trial Court for an award of reasonable attorney's fees and costs incurred by Class Counsel. Class Counsel agrees to request no more than \$1,400,000 and Trinity agrees to not oppose any fee request up to that amount. Any attorneys' fees or costs awarded by the Trial Court shall be paid from the Settlement Fund.

Section 5.2 Incentive Award For Class Representatives

Class Counsel intends to make an application to the Trial Court for an award of a reasonable and customary incentive award in the amount of \$10,000 to be paid to each of the Class Representatives as compensation for their services in representing the Class Members. Any incentive award authorized by the Court shall be paid out of the Settlement Fund, and Trinity shall have no obligation to pay any amount for an incentive award other than its obligation to fund the Benefit Fund.

Section 5.3 Claims Administration Fees And Expenses

Class Counsel intends to make an application to the Trial Court for an award of reasonable costs and fees associated with the notice and administration of this settlement. Any amounts awarded by the Court for administering this Settlement shall be paid out of the Administration Fund. Other than funding the Administration Fund as described in

Section 2.3, Trinity shall have no obligation to pay any fees or expenses associated with notice or administration of this settlement.

ARTICLE 6 – RELEASE

Section 6.1 Release

After the Trial Court grants Final Judicial Approval, the Parties hereby agree that every Settled Claim of each Class Member (other than a Class Member who exercises a valid and timely Opt-Out Right pursuant to Section 3.3) shall be conclusively compromised, settled and released as to Trinity and each other Released Party. Such releases shall remain effective regardless of changes in the circumstances or condition of Trinity, the other Released Parties or such Class Members.

Section 6.2 Trial Court Retains Jurisdiction

The Court shall retain exclusive and continuing jurisdiction of the Action, the Parties, all Class Members (other than a Class Member who exercises a valid and timely Opt-Out Right pursuant to Section 3.3), Trinity and the other Released Parties, and over this Settlement Agreement with respect to the performance of the terms and conditions of the Settlement Agreement, to assure that all disbursements are properly made in accordance with the terms of the Settlement Agreement, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement. Any dispute that arises under this Settlement Agreement shall be submitted to the Trial Court by noticed motion.

ARTICLE 7 – SETTLEMENT IMPLEMENTATION

Section 7.1 General

In order to become effective, this Settlement Agreement must receive Final Judicial Approval.

Section 7.2 Settlement Data

Trinity represents that, to the best of its knowledge based on reasonable investigation and inquiry, the following spreadsheets that it delivered to Class Counsel accurately reflect the amounts that each Class Member paid Trinity for Allocated Utility Charges through January 25, 2023:

(a) The spreadsheet that Trinity delivered to Class Counsel on July 29, 2022 (marked TRINITY00002);

(b) The spreadsheet that Trinity delivered to Class Counsel on February 14, 2023 (marked TRINITY00005); and

(c) The spreadsheet that Trinity delivered to Class Counsel on April 7, 2023 (marked TRINITY00006).

Section 7.3 Approval Process Provisions

(a) As soon as practicable after this Settlement Agreement is executed, Class Counsel shall file a motion requesting preliminary approval of the Settlement Agreement and approval of the forms of notice (the “*Notice*”).

(b) The Parties shall cooperate and assist each other in all of the filings and proceedings relating to the obtaining Preliminary Approval and in any further filings and proceedings necessary to obtain Final Judicial Approval of the Settlement, and in any related appeals.

Section 7.4 Termination

(a) The settlement reflected by this Settlement Agreement is expressly conditioned on obtaining Preliminary Approval and Final Judicial Approval of the Settlement. In the event that the Trial Court does not grant Preliminary Approval or Final Judicial Approval, this Settlement Agreement will terminate and the Parties will return, without prejudice, to their status in court to litigate and try all of their disputes, with Class Counsel promptly and voluntarily dismissing without prejudice all named defendants (not including Doe defendants) other than Trinity and the Class Action Tolling Agreement dated December 2022 remaining in full force and effect. In such event, this Settlement Agreement and its existence shall be inadmissible to establish any fact relevant to any alleged liability of any party.

(b) In the event that the total Allocated Utility Charges for all Class Members who exercise an Opt-Out Right pursuant to Section 3.3 exceeds \$420,000, then Trinity shall have the option to terminate this Settlement Agreement and the Parties will return, without prejudice, to their status in court to litigate and try all of their disputes. In such event, this Term Sheet and its existence shall be inadmissible to establish any fact relevant to any alleged liability of any party and the Attached Account shall remain attached until further order from the Court. To exercise its right to terminate this Settlement Agreement under this subsection, Trinity must notify Class Counsel of its termination by e-mail on or before the date that is ten (10) Business Days after Class Counsel provides Trinity with a list of Class Members who exercised their Opt-Out Right under Section 3.3. If Trinity does not exercise its right to terminate this Settlement Agreement within ten (10) Business Days after Class Counsel provides Trinity with a list of Class Members who exercised their Opt-Out Right under Section 3.3, Trinity waives its right to terminate this Settlement Agreement under this subsection.

ARTICLE 8 – MISCELLANEOUS

Section 8.1 Successors and Assigns

This Settlement Agreement shall be binding on the successors and assigns of the Parties.

Section 8.2 No Admission of Liability or Lack of Merit

(a) Neither this Settlement Agreement nor any Annex, document or instrument delivered hereunder nor any of the statements in the notice documents in connection herewith, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Settlement Agreement, is intended to be or shall be construed as or deemed to be evidence of an admission or concession by Trinity, or the Released Parties of any liability or wrongdoing or of the truth of any allegations asserted by any plaintiff against it or them, or as an admission by the Class Representative or members of the Settlement Class of any lack of merit in their claims, and no such statement, transaction or proceeding shall be admissible in evidence in any legal proceeding for any such purpose except for purposes of obtaining approval of this Settlement Agreement in this or any other proceeding.

(b) Except as expressly provided in this Settlement Agreement, all parties shall bear their own fees and costs of litigation.

Section 8.3 Titles and Headings

The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

Section 8.4 Notice to Parties

Any notice, request, instruction or other document to be given by any Party to another Party shall be in writing and delivered personally or sent by express mail, with a copy to be sent both by facsimile and e-mail as follows, or as otherwise instructed by a notice delivered to the other Party pursuant to this subsection:

If to Trinity:

Richard Van Duzer
FARELLA BRAUN + MARTEL LLP
235 Market Street
17th Floor
San Francisco, CA 94104
Email: rvanduzer@fbm.com

Andrew J Wiegel, Esq.
WIEGEL LAW GROUP, PLC
414 Gough Street
San Francisco, CA
Email: andrew@wiegellawgroup.com

If to the Class Representative or Class Counsel:

Brian J. Devine
SEEGER DEVINE LLP
4040 Civic Center Dr., Suite 200
San Rafael, CA 94903
Facsimile: (415) 981-9266
E-mail: bdevine@seegerdevine.com

Section 8.5 Receipt of Documentation

Unless otherwise specified, any form or other documentation required to be submitted under this Settlement Agreement shall be deemed timely if it is postmarked on or before the date by which it is required to be submitted under this Settlement Agreement.

Section 8.6 Taxability of Settlement Benefits

(a) Neither Plaintiff, Class Counsel, Trinity, nor Trinity's Counsel is giving any Class Member advice on whether the benefits provided in this Settlement are taxable or how much any Class Member might owe in taxes. Class Counsel believes that in some, but not all, situations, some or all of the benefits provided in this Settlement could potentially be taxable. Consequently, the Claims Administrator will obtain from each Class Member a Social Security Number or Tax Identification Number (if not already known), and in some cases, a 1099 form may be issued to Class Members reflecting the total benefits provided to them under this Settlement. Class Members should consult a tax advisor if they have any questions about the tax consequences of the Settlement based on their specific situation.

(b) Neither Plaintiff, Class Counsel, Trinity, nor Trinity's Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

Section 8.7 No Third Party Beneficiaries

No provision of this Settlement Agreement or any Annex hereto is intended to create any third-party beneficiary to this Settlement Agreement, except the Released Parties.

Section 8.8 Entire Agreement

This Settlement Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and, except as specifically set forth herein or therein, supersedes and cancels all previous agreements, negotiations, and commitments in writings between the Parties hereto with respect to the subject matter hereof. Specifically, this Settlement Agreement supersedes the Settlement Agreement entered into by the parties on January 25, 2023. This Settlement Agreement may not be changed or modified in any manner unless in writing and signed by a duly authorized officer of Trinity and by a duly authorized representative of the Class Representative.

Section 8.9 Governing Law

This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of laws principles thereunder.

Section 8.10 Original Signatures

This Settlement Agreement may be signed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement among Trinity and the Class, by their respective counsel as set forth below.

TRINITY MANAGEMENT SERVICES

By: 

Date: 4/10/23

Its: CFO / Treasurer

ON BEHALF OF CLASS MEMBERS:

**SEEGER DEVINE LLP
Class Counsel**

By: 
Brian J. Devine

Date: 4/10/2023